

RECEIVED

BLATMAN, BOBROWSKI & MEAD, LLC
Attorneys At Law

NOV 20 2015

**PLANNING BOARD
GRAFTON, MA**

TO: Planning Board, Town Planner, Town Administrator
FR: Town Counsel *[Signature]*
DA: November 20, 2015
RE: Grafton Hill

This memo is regarding the Grafton Hill Subdivision, and is based upon my review of the plans and other materials submitted by the Applicant, as well as the relevant statutes and case law.

As you are aware, in 1954 the Grafton Planning Board endorsed a "Plan of House Lots owned by Oliver Christensen Et Ux." (hereafter referred to as the "1954 Plan") which depicted 22 house lots located on "Clearview Street" which is located perpendicular to the west side of North Street. The Plan was recorded in Plan Book 202, Plan 33, on or about December 10, 1954. To date, houses have been constructed on only two of the lots: "Lot 1," located on the southern corner of North Street and "Clearview Street," and "Lot 13," located seven lots west of North Street on the northern side of "Clearview Street," which was never constructed but exists as an unpaved gravel way.

The land depicted in the 1954 Plan, as well as abutting property to the south, is now owned by Westerly Side Grafton, LLC ("the Applicant") and together totals 29.5 acres. The Applicant has filed a petition to modify the 1954 Plan pursuant to G.L. c. 41 § 81W. Under Massachusetts case law, the version of G.L. c. 41 § 81W that is applicable to this subdivision is not the current version, but is rather the version that was in force at the time the subdivision was approved in 1954. Murphy v. Planning Board of Norwell, 5 Mass. App. Ct. 536 (1977); Terrill v. Planning Board of Upton, 71 Mass. App. Ct. 171 (2008). That version stated in relevant part:

No modification, amendment or rescission . . . shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan . . . without the consent of the owner of such lots, and of the holder of the mortgage . . .

The current version of 81W added an important proviso that is generally applicable but is not applicable to this case. Specifically, currently, where there has been a sale to a single grantee of either the entire subdivision or all unreleased lots--which is arguably the case here--the current

RECEIVED

owner/mortgage holder does not need to consent to a modification, amendment, or rescission. Since that proviso is not in play here, the Planning Board does not have the option of moving under 81W itself to modify, amend, or rescind its approval of the 1954 Plan, unless the owner/mortgage holder consents.

Additionally, with respect to the roadway, "Clearview Street," it appears that way could be legally constructed as shown on the 1954 Plan under G.L. c. 41, § 81O.¹ The local rules and regulations that are applicable to the roadway are those that were in existence at the time of approval; since there were no location regulations in 1954, there are no local rules that are strictly applicable. However, although the Applicant could construct the way as depicted on the 1954 Plan, the Town would not be required to (and arguably would be precluded from) accepting it as a public way since it does not conform to current specifications and regulations pertaining to public ways; the Applicant has indicated that it will meet current roadway standards.

Notwithstanding the above, the subdivision has clearly lost the benefit of any zoning freeze(s) under G.L. c. 40A, and therefore the lots must comply with current zoning requirements, a point that the Applicant concedes. The lots depicted in the 1954 Plan are substantially smaller than the current requirement of a minimum of 40,000 square feet, but with the addition of the land to the south subdivided into "rat tail" formation, the minimum lot area can be achieved, as is depicted in the Modified Definitive Subdivision Plan (hereinafter "the Modified Plan") dated September 30, 2015. Additionally, with a small reduction in the number of lots and some minor reconfigurations, minimum frontage also appears to have been substantially achieved. Although the lot configuration may be visibly disturbing, I have reviewed the Applicant's proposed "Declaration of Restriction," under which the "rat tail" portions of the lots will remain open and undisturbed in perpetuity, with enforcement mechanisms in favor of the Town. Although we are still finalizing its terms, I am generally satisfied with the restrictions and enforcements mechanisms.

Please let me know if you have any further questions.

¹ "After the approval of a plan the location and width of ways shown thereon shall not be changed unless the plan is amended accordingly as provided" in § 81W.